

Zawitoski, John

From: Criss, Jeremy
Sent: Tuesday, April 02, 2013 6:40 PM
To: Faden, Michael; Mihill, Amanda
Cc: 'David Weitzer'; 'Lonnie Luther'; Compton, Keith
Subject: T&E Committee from April 1, 2013 Bill 41-12 Roadside Trees-Protections
Attachments: RE: February 25, 2013 T & E Committee Work Session Bill 41-12 and Bill 35-12

Hello Mike and Amanda.

I am following up on the attached message and the outcome from the April 1, 2013 T&E Committee discussion on Bill 41-12. I noticed in your staff memorandum the recommendation to exclude rights-of-ways in "prescriptive easements" from the bill as outlined below. In looking at the Bill in your packet I do not see this Council staff recommendation incorporated into the revised-amended bill.

Most of the roads in the County that are prescriptive easements are also considered Rustic roads. Therefore, I believe the Rustic roads defined in Chapter 49 Article 8 are also considered public highways identified in the current County Code section 49-6? Could you please let me know if I am mistaken on the relationship between Rustic roads and those defined as public highways (roads with right-of-ways in prescriptive easements) in section 49-6.

Thanks J

At its first worksession, the Committee directed staff to review whether the County's agricultural areas could be excluded from Bill 41-12. It is not clear that the County law can directly exclude all rights-of-way in agricultural areas without running afoul of the state's stringency requirement. After further review, Council staff believes that the County could exclude rights-of-way in "prescriptive easements" from the bill. These easements are addressed in current County Code §49-6:

49-6. Roads used for 20 years may be declared public highways.

(a) Whenever any road has been used by the public for 20 or more years, though the road may never have been condemned or granted as a public highway, the

County Executive may by Executive order published in the County Register declare the road to be a public highway.

(b) The public right-of-way of a road declared as a public highway under subsection (a) must include permanent maintenance easements which extend 10 feet beyond each pavement edge.

Council staff believes that excluding these easements would address many concerns raised about rights-of-way in the agricultural areas. Therefore, we recommend inserting the following amendment on C6 after line 93:

LQI cutting or clearing a tree that is in the right-of-way of a road declared as a public highway under Section 49-6Ca).

Jeremy V. Criss
Agricultural Services Manager
Department of Economic Development
Agricultural Services Division
18410 Muncaster Road

Derwood, Maryland 20855

301-590-2830

301-590-2839 (Fax)

jeremy.criss@montgomerycountymd.gov

<http://www.montgomerycountymd.gov/agsservices>

Zawitoski, John

From: Criss, Jeremy
Sent: Wednesday, March 13, 2013 3:45 PM
To: Mihill, Amanda
Cc: Faden, Michael; Faust, Josh; Compton, Keith
Subject: RE: February 25, 2013 T & E Committee Work Session Bill 41-12 and Bill 35-12
Attachments: Re: Council Bill 41-12 Streets and Roads-Roadside Trees-Protections.

Hello Amanda,
 I spoke with Keith Compton on this issue as outlined in the attached message.
 Keith responded to my message and then he called me to discuss it further.
 During our conversation Keith suggested that an exemption referencing the Rural and Rustic Roads would probably represent the best approach.
 I agreed with Keith because most the agricultural properties in the County are served by rural and rustic roads as defined under Chapter 49 Article 8.
 I believe this approach would work and the farmers would be most appreciative if an amendment to Bill 41-12 was approved by the Council.
 I want to thank the Council staff for addressing the needs of the agricultural community.
 J

Jeremy V. Criss
 Agricultural Services Manager
 Department of Economic Development
 Agricultural Services Division
 18410 Muncaster Road
 Derwood, Maryland 20855
 301-590-2830
 301-590-2839 (Fax)
jeremy.criss@montgomerycountymd.gov
<http://www.montgomerycountymd.gov/agsservices>

From: #P klw/#Dp dqgd#
Sent: #Z hgqhvqd | /#P dufk#46/#5346#4=35#SP
To: #Fulv/#Muhp |
Cc: #Idghq/#P Ifkdho#Idxw/#Mrvk
Subject: #UH#Theuxdu | #58/#5346#N# #H#Frp p lwhh#Z run#Vhvlrq#Elw#74045#lqg#Elw#68045

Jeremy,

We are still mulling over how best to clarify which agricultural roads should be exempt from Bill 41-12. We've learned from the County Attorney's Office that our suggestion presented in the Second T&E worksession packet (excluding roads that are public highways under 49-6) raised questions and may not exempt the roads we were hoping to exempt. We think language exempting "other roads in the rural and agricultural regions of the County" is very broad and could exempt roads we don't want to exempt. What if we exempt "rural and rustic roads"? Would that cover most of the roads that you are hoping to exempt?

Amanda

From: #Fulv/#Muhp | #
Sent: #Iugd | /#Theuxdu | #55/#5346#6=8 ; #SP
To: #Ehudghu/#Urjh# #Iruhq/#Qdqf | >#Jlp hu/#Kdqv
Cc: #Iulfk/#P duf>#Idghq/#P Ifkdho#P klw/#Dp dqgd>#Gdyb#Z hlv#hu*#Jlvrq/#Fbg | >#Idxw/#Mrvk>#Sxp p hu/#Gdyb#F1
Subject: #Theuxdu | #58/#5346#N# #H#Frp p lwhh#Z run#Vhvlrq#Elw#74045#lqg#Elw#68045

4/25/2013

Dear Members of the County Council Transportation, Infrastructure, Energy, and Environment-T & E Committee. Attached you will find a letter from the Montgomery County Agricultural Advisory Committee as a follow up to the January 28, 2013 Work Session where these tree related bills were discussed. On February 6, 2013 a meeting requested by T & E Chair Roger Berliner with leaders from the County's agricultural community was scheduled to discuss these tree related bills. During these meetings there were several amendments that were suggested and the attached letter attempts to address these amendments. Please let us know if you have any questions. Thanks J

Jeremy V. Criss
Agricultural Services Manager
Department of Economic Development
Agricultural Services Division
18410 Muncaster Road
Derwood, Maryland 20855
301-590-2830
301-590-2839 (Fax)
jeremy.criss@montgomerycountymd.gov
<http://www.montgomerycountymd.gov/agsservices>

Zawitoski, John

From: Compton, Keith
Sent: Thursday, February 28, 2013 7:19 AM
To: Criss, Jeremy
Cc: Hanley, Kyle K.
Subject: Re: Council Bill 41-12 Streets and Roads-Roadside Trees-Protections.

Jeremy

There are many prescriptive rights if ways in Montgomery County, many of which are located in the up-county area.

I have not researched each and every one, but our GIS database and land record research provides info we in Highway need with respect to maintenance.

I hope this helps. If not, contact my Engineer, Kyle Hanley. Kyle may be able to provide further clarification.

And you're always welcome to contact me direct at 240-777-7607

Keith

Sent from my iPhone

On Feb 27, 2013, at 4:57 PM, "Criss, Jeremy" <Jeremy.Criss@montgomerycountymd.gov> wrote:

Hello Keith,
 I have been working with the County Council on Bill 41-12 and I have a question I was hoping you could answer or forward to someone who could help me.
 Outlined below you will see the complete link to the County Council Staff packet for the Bill.
http://www6.montgomerycountymd.gov/content/council/pdf/agenda/cm/2013/130225/20130225_TE1.pdf
 I have outlined the Council staff recommendations from page 4 of the cover memorandum surrounding the agricultural activities.
 Please see the wording that is underlined that addresses the concerns expressed by the agricultural community.

3) Should agricultural activities be exempt from the County law? The Council heard testimony and received correspondence from the Soil Conservation District and the Farm Bureau urging the Council to exempt routine maintenance on public rights-of-ways and agriculturally assessed properties from the permit requirement (see ©56-57 and 58-61). At its first worksession, the Committee directed staff to review whether the County's agricultural areas could be excluded from Bill 41-12. It is not clear that the County law can directly exclude all rights-of-way in agricultural areas without running afoul of the state's stringency requirement. After further review, Council staff believes that the County could exclude rights-of-way in "prescriptive easements" from the bill. These easements are addressed in current County Code §49-6:

- 49-6. Roads used for 20 years may be declared public highways.
- (a) Whenever any road has been used by the public for 20 or more years, though the road may never have been condemned or granted as a public highway, the County Executive may by Executive order published in the County Register declare the road to be a public highway.
 - (b) The public right-of-way of a road declared as a public highway under subsection (a) must

include permanent maintenance easements which extend 10 feet beyond each pavement edge.

Can you help me to understand whether there exists an approved Executive Order to classify roads with prescriptive rights-of-ways for Roads used for 20 years declared public highways.

The answer to this question is most important regarding the Council Staff recommendation to exclude rights-of-ways prescriptive easements from the bill.

Please let me know if you have any questions.

Thanks J

Jeremy V. Criss
Agricultural Services Manager
Department of Economic Development
Agricultural Services Division
18410 Muncaster Road
Derwood, Maryland 20855
301-590-2830
301-590-2839 (Fax)
jeremy.criss@montgomerycountymd.gov
<http://www.montgomerycountymd.gov/agsservices>